

The enterprise zone building materials exemption allows retailers located in the municipality or unincorporated area of a county that established an enterprise zone to make tax-free sales of building materials that will be incorporated into real estate located in the enterprise zone. See 86 Ill. Adm. Code 130.1951. (This is a PLR).

July 17, 2000

Dear Xxxxx:

This Private Letter Ruling, issued pursuant to 2 Ill. Adm. Code 1200 (see <http://www.revenue.state.il.us/legalinformation/regs/part1200>), is in response to your letter of April 20, 2000, received on May 2, 2000. Review of your request for a Private Letter Ruling disclosed that all information described in paragraphs 1 through 8 of subsection (b) of the enclosed copy of Section 1200.110 appears to be contained in your request. This Private Letter Ruling will bind the Department only with respect to COMPANY for the issue or issues presented in this ruling. Issuance of this ruling is conditioned upon the understanding that neither COMPANY nor a related taxpayer is currently under audit or involved in litigation concerning the issues that are the subject of this ruling request.

In your letter, you have stated and made inquiry as follows:

I am writing to you requesting a Private Letter Ruling (PLR), pursuant to 2 Ill. Admin. Code Sec. 1200.110, addressing whether the BUSINESS utilized by our client, the COMPANY (the COMPANY), satisfies the requirements for the sales tax (the Retailers' Occupation Tax/Use Tax) exemption for sales of building materials incorporated into real estate located in an Enterprise Zone. The aforementioned sales of building materials began on January 1, 2000 and continue to the present. PLRs respond to inquiries made by taxpayers or the representatives under power of attorney (attached). We understand the PLRs discuss tax principles and are binding on the Illinois Department of Revenue (IDOR) to the extent that the material facts of the situation remain the same, and the law relied upon in the ruling does not change.

#### **FACTS**

##### **1. The Business Organization**

The COMPANY, a company located in CITY, Illinois, is in the process of improving its real property located in a CITY Enterprise Zone. The COMPANY utilizes the BUSINESS, located in CITY, to purchase the necessary building materials and sell those materials to the Contractor. The Contractor then performs the capital improvements. The BUSINESS is a wholly-owned subsidiary of the COMPANY. There are

various business reasons for utilizing the BUSINESS. First, the BUSINESS provides for the centralization of costs and ease of administration. By having a separate entity handle the purchase of building materials, the COMPANY can monitor the costs and business negotiations of the project in a faster, more efficient manner. Second, the BUSINESS promotes economic growth within the Enterprise Zone and fills a void in the market for retailers of heavy building materials within the municipality.

## 2. Steps of the Capital Improvement

The COMPANY is taking the following steps in implementing its capital improvement plan:

1. A separate legal entity was created to serve as an Enterprise Zone retailer (the BUSINESS) of building materials for incorporation into real estate located in the Enterprise Zone.
2. The BUSINESS has a separate Department registration and FEIN number.
3. The BUSINESS leases office space from the COMPANY within the municipality that created the Enterprise Zone. The office space is leased from the COMPANY at fair market value.
4. The BUSINESS has registered for collection of the Illinois Retailers' Occupation Tax and other applicable taxes.
5. The BUSINESS has a separate bank account into which its receipts are deposited. A sub-account shared with the COMPANY is used to make payments to the companies (the 'Materials Suppliers') from which the BUSINESS purchases building materials. The BUSINESS transfers monies from its separate bank account to the sub-account to replenish the funds used to pay the Materials Suppliers.
6. Contractors and subcontractors ('the Contractor') were requested to utilize the BUSINESS for the purchase of building materials for incorporation into real estate located in the Enterprise Zone.
7. Purchases by the BUSINESS are effectuated in the following manner:
  - (a) The Contractor prepares a purchase order ('Contractor's Purchase Order') for all purchases of building materials from the BUSINESS. BUSINESS may purchase the materials from any Materials Supplier that has those materials available. The Contractor may submit to the BUSINESS the names and addresses of suggested Materials Suppliers from

whom materials may be obtained.<sup>1</sup> The BUSINESS initials and date stamps the Contractor's Purchase Order when received and accepted. All purchase orders are accepted at the BUSINESS's CITY location. The BUSINESS keeps all of the Contractor's Purchase Orders received in its files.

- (b) A Purchaser's Statement executed and signed by the Contractor is placed on file with the BUSINESS at the beginning of the project. The Purchaser's Statement contains a certification by the Contractor that the building materials being purchased are for incorporation into real estate located in an Enterprise Zone, a description of the building materials being purchased, the location of the real estate into which the building materials will be incorporated, the name of the Enterprise Zone in which that real estate is located, and the Contractor's signature and date of signing.
- (c) Upon receipt of the Contractor's Purchase Order and the Purchaser's Statement, the BUSINESS prepares and provides to the Materials Supplier a Purchase Order ('the BUSINESS's Purchase Order') which incorporates the materials listed on the Contractor's Purchase Order. The Contractor's Purchase Order is attached to the BUSINESS's Purchase Order and sent to the Materials Supplier. The BUSINESS's Purchase Order asks that the materials be drop-shipped to the Contractor at the construction site. The BUSINESS's Purchase Order includes a Certificate of Resale.
- (d) Upon receipt of the materials which are drop-shipped to the Contractor pursuant to the BUSINESS's Purchase Order, the Contractor inspects the materials and sends a copy of the Materials Supplier's shipping documents to the BUSINESS indicating that the materials meet standards. When the Materials Supplier is unable to deliver appropriate materials, the BUSINESS finds another Materials Supplier from which to purchase the goods.
- (e) The BUSINESS records the purchase of the materials from the Materials Supplier and the sale of the materials to the Contractor in its books and records.
- (f) Upon receipt of the invoice from the Materials Supplier, the BUSINESS invoices the Contractor for the amount due.
- (g) The BUSINESS pays the Materials Supplier upon receipt and deposit of payment from the Contractor.

8. All functions related to the processing of its documents - including acceptance of the Contractor's Purchase Order - are performed by the BUSINESS at its location in CITY, Illinois.

#### **ISSUE**

Do the steps described above regarding the establishment and operations of the BUSINESS satisfy the requirements of 86 Ill. Adm. Code 130.1951, allowing the BUSINESS to claim the Enterprise Zone Building Materials Exemption?

#### **STATEMENTS**

No audit or litigation is currently pending between the COMPANY and the IDOR. To the best of our knowledge, the IDOR has not previously ruled on the same or similar issues for the COMPANY, nor has the COMPANY submitted a petition on a similar issue and withdrew it before a letter ruling was issued. The IDOR did issue a General Information Letter (GIL) on these issues, which has been enclosed.

#### **LAW**

In Illinois, retailers may claim an exemption with respect to sales of building materials incorporated into real estate located in an Enterprise Zone. 35 ILCS 120/5k and 86 Ill. Adm. Code 130.1951(a)(1). In order to qualify for the exemption, a retailer must comply with the following requirements; (1) the retailer must have an identifiable physical presence in the municipality or the county that has established the enterprise zone; (2) the retailer must register with the Department as a retailer at a location in the municipality or in the unincorporated area of the county that has established the enterprise zone; and (3) the retailer must be able to document the acceptance of purchase orders from its customer, the contractor, at the location in the municipality or the county that has established the enterprise zone. Id. At (a)(2)(A)-(C). It is critical that a clear 'paper trail' exist showing that a contractor purchased the materials from a qualified retailer and that, in a separate transaction, the retailer purchased the materials from a supplier. ST 95-270 GIL, ST 95-0433 GIL & ST 97-27.

#### **ANALYSIS**

The BUSINESS in this case satisfies all the conditions of 86 Ill. Adm. Code 130.1951, and should qualify for an exemption from collecting sales tax on building materials sold for incorporation into real estate located in the Enterprise Zone. The conditions are satisfied as follows:

- A. The retailer (the BUSINESS) must have an identifiable physical presence in the municipality or the unincorporated

area of the county that has established the enterprise zone. In this case, the BUSINESS has rented office space within the City of CITY, Illinois.

- B. The retailer must be registered with the Department as a retailer at a location in the municipality or in the unincorporated area of the county that has established the enterprise zone. In this case, the BUSINESS has registered with the Department for a registration number and FEIN. The BUSINESS listed as its address the rented office space within CITY, Illinois.
- C. The retailer must be able to document the acceptance of purchase orders at a location in the municipality or the unincorporated area of the county that has established the enterprise zone. In this case, the BUSINESS accepts, initials, and date stamps all of the Contractor's Purchase Orders at its rented office space in CITY, Illinois.
- D. There must be a sale from a supplier to a retailer which is independent of the sale from the retailer to the contractor, the exemption applicable to the sale transaction must be properly documented, and the sale transaction must be reflected in the books and records of the qualified retailer. In this case, the sale of building materials from the Materials Supplier to the BUSINESS occurs and is documented as follows:
  - 1. The BUSINESS, located in CITY, Illinois, submits its Purchase Order to the Materials Supplier.
  - 2. The BUSINESS's Purchase Order includes a certificate of resale.
  - 3. The Materials Supplier issues an invoice to the BUSINESS at its CITY, Illinois office.
  - 4. The BUSINESS pays the Materials Supplier's invoice.

The resale exemption applicable to this sale is properly documented by the BUSINESS's issuance of a Certificate of Resale to the Materials Supplier. The BUSINESS records this purchase in its books and records.

- E. There must be a sale from the retailer to the contractor which is independent of the sale from the supplier to the retailer, the exemption applicable to the transaction must be properly documented, and the transaction must be reflected in the books and records of the qualified retailer. In this case, the sale of

building materials from the BUSINESS to the Contractor occurs and is documented as follows:

1. The Contractor submits its Contractor's Purchase Order to the BUSINESS.
2. The Contractor executes and provides a Purchaser's Statement to the BUSINESS at the beginning of the project. The Purchaser's Statement includes a certification by the Contractor that the building materials being purchased are for incorporation into real estate located in the Enterprise Zone, a description of the building materials being purchased, the location of the real estate into which the building materials will be incorporated, the name of the Enterprise Zone in which the real estate is located, and the Contractor's signature and date of signing.
3. The BUSINESS issues an invoice to the Contractor.
4. The contractor pays the BUSINESS's Invoice.

The enterprise zone building materials exemption applicable to this transaction is properly documented by the Contractor's issuance of a Purchaser's Statement to the BUSINESS. The BUSINESS records this sale in its books and records.

#### **CONTRARY AUTHORITY AND DISCUSSION**

In General Information Letter ST-94-0092-GIL, the Department ruled that the documents submitted properly documented that the zone retailer's sale to the contractor was exempt from tax under the enterprise zone buildings material exemption. However, the Department indicated that certain aspects of the documents submitted 'may tend to raise questions about the transaction, which could trigger a more extensive audit [of the exemption].' In this regard, the Department cited:

1. The contractor listed the material supplier's name and address in the purchase order to the zone retailer.
2. The zone retailer's purchase order to the material supplier instructed the material supplier to send all invoices, correspondence, and shop drawings to the zone retailer in care of the contractor at the contractor's office.

The facts in the present ruling request are clearly distinguishable from those in ST-94-0092-GIL. First, in the present case, while the contractor's purchase order lists the name and address of a materials supplier, the name listed is merely a requested vendor which is subject to the BUSINESS's (the zone retailer's) approval. In other

words, the BUSINESS is free to order from whomever it chooses. Moreover, the contractor's purchase order expressly states that the items ordered will be purchased by the BUSINESS from another company pursuant to a separate transaction and then resold to the Contractor. Second, in the present case, the BUSINESS's Purchase Order instructs the Materials Supplier to send all invoices and correspondence to BUSINESS's office, not to the Contractor's office.

In Private Letter Ruling ST-89-0255 PLR, the Department denied the enterprise zone buildings material exemption to the extent that the materials supplier billed the contractor of the nursing home directly. The facts of the present case are clearly distinguishable from those in ST-89-0255 PLR, since, in the present case, the Materials Suppliers has separate transactions with and only invoice the BUSINESS, and not the Contractor.

#### **CONCLUSION**

Based on the foregoing facts, please confirm that these transactions qualify for the exemption from sales tax for the sale of building materials incorporated into real estate located in an Enterprise Zone under 86 Ill. Adm. Code 130.1951.

We request that the Department send to us on behalf of our client a PLR addressing the issue presented. Your cooperation is appreciated.

Enclosed is a copy of 86 Ill. Adm. Code 130.1951 concerning Enterprise Zones. The enterprise zone building materials exemption allows retailers located in the municipality or unincorporated area of a county that established an enterprise zone to make tax-free sales of building materials that will be incorporated into real estate located in the enterprise zone.

In order for businesses to qualify for the exemption as retailers, they must comply with the following requirements:

1. Retailers must have an identifiable physical presence in the municipality or the county that has established the enterprise zone;
2. Retailers must register with the Department as a retailer at a location in the municipality or in the unincorporated area of the county that has established the enterprise zone;
3. Retailers must be able to document the acceptance of purchase orders at the location in the municipality or the county that has established the enterprise zone.

In order for the enterprise zone building materials exemption to be claimed, it must be shown that qualifying building materials were purchased from a retailer located in the jurisdiction that created the enterprise zone into which

the building materials will be incorporated. It is critical that a clear paperwork trail exists showing that buyers purchased the materials from qualified retailers. In general, the following two transactions must exist:

1. Sales from suppliers to retailers who are located in the jurisdiction that created the enterprise zone (exempt as sales for resale); and
2. Sales from retailers who are located in the jurisdiction that created the enterprise zone to buyers (exempt by reason of the enterprise zone building materials exemption).

Each of these transactions must exist independent of the other and the exemption applicable to each transaction must be documented. We urge taxpayers not to be cavalier in structuring these transactions. Generally, the following documentation establishes the two transactions and the available exemptions:

1. Sales from suppliers to retailers:
  - a. Purchase orders from retailers to the suppliers;
  - b. Certificates of Resale from retailers to suppliers (see the enclosed copy of 86 Ill. Adm. Code 130.1405, which describes the requirements for Certificates of Resale);
  - c. Invoices from suppliers to retailers; and
  - d. Payments to suppliers from retailers.
2. Sales from retailers to purchasers:
  - a. Purchase orders from purchasers to the retailers;
  - b. Enterprise zone building materials certifications from purchasers to retailers containing all of the information set forth at 86 Ill. Adm. Code 130.1951(a)(3);
  - c. Invoices from retailers to purchasers; and
  - d. Payments to retailers from purchasers.

There is no requirement that the materials be physically received at the retailer's location.

Under the scenario you set forth, you have indicated that the retailer will have an identifiable physical presence in the municipality or the county that has established the enterprise zone. You have also indicated that the retailer is registered with the Department as a retailer at a location in the municipality or in the unincorporated area of the county that has established the enterprise zone. Further, you have indicated that the retailer will be able to document the



acceptance of purchase orders at the location in the municipality or the county that has established the enterprise zone.

Your letter indicated that a clear paperwork trail would exist showing that suppliers sold the materials to qualified retailers who then resold them to the contractors. Your letter also stated that the retailer will issue a Certificate of Resale to the material supplier and that the material supplier will invoice the retailer and drop ship the materials to the contractor. The retailer will, in turn, invoice the construction contractor. The construction contractor will pay the invoice to the retailer. The retailer will pay the material supplier. Sales of the building materials made in compliance with the scenario set forth in your letter, will qualify for the enterprise zone exemption.

The facts upon which this ruling are based are subject to review by the Department during the course of any audit, investigation, or hearing and this ruling shall bind the Department only if the material facts as recited in this ruling are correct and complete. This ruling will cease to bind the Department if there is a pertinent change in statutory law, case law, rules or in the material facts recited in this ruling.

I hope this information is helpful. If you have further questions concerning this Private Letter Ruling, you may contact me at (217) 782-2844. If you have further questions related to the Illinois sales tax laws, please visit our website at [www.revenue.state.il.us](http://www.revenue.state.il.us) or contact the Department's Taxpayer Information Division at (217) 782-3336.

Very truly yours,

Melanie A. Jarvis  
Associate Counsel

MAJ:msk  
Enc.

<sup>1</sup> The language on the contractor's purchase order is as follows:

[The Contractor] understands that the items ordered herein will be purchased by the BUSINESS from another company pursuant to a separate transaction and resold to it. [The Contractor] requests, subject to the BUSINESS's approval, that the items be purchased by the BUSINESS for resale from:

Material Supplier  
Address